IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.5879 of 2006
Date of Decision : November 27, 2006.

Partap Singh ..... Petitioner

Vs.

Om Parkash and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.J.S.Hooda, Advocate
for the petitioner.

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P.S.Patwalia, J. (Oral) :

Learned counsel for the petitioner at the outset submits that while typing the order passed by the learned Additional District Judge, Faridabad, the paragraph numbered as Para 12 has wrongly been typed. The same does not form the part of the order of the learned Additional District Judge. After Para 11, next three paragraphs are those which are numbered as Para 13, 14 and 15 in the typed order.

I have heard learned counsel for the petitioner and perused the orders passed by the courts below. It has been found by the trial court that the stand taken by the plaintiff that the respondents have encroached upon his property was not prima facie proved on the basis of the documents before the Court. In fact list of allottees filed by the respondent showed that the plots 1 and 2 were allotted to defendants no.1 and 2. Similarly the aks sizra showed that the plots were partitioned amongst Harijans and therefore prima facie case of the plaintiff was not made out. The relevant

observations of the trial court are as hereunder :-

> *"Both stands taken by the plaintiff are contrary to each other as plaintiff has nowhere mentioned in his plaint that suit property bears house no.306. Plaintiff has claimed that he has used the property for the purpose of tethering of cattle and he has placed two tin sheds, two khors, one bonga, three bitoras, such type of possession does not amount to possession in the eye of law as held in case law titled as Dhoom Singh vs. Baisakhi Ram 1996 (3) PLR 153. Whereas on the contrary defendants have tendered Aks Sizra which reveals plot numbers of the property in dispute. It is not disputed that suit land is situated in Gait Makbuja Harijan. As per the case of the defendants, the suit property has been partitioned and plot no.4 has been allotted to plaintiff whereas plot no.1 and 2 have been allotted to the defendants over which they have raised the construction. A list of allottees shows that plots no.1 and 2 were allotted to defendants no.1 and 2 and plot no.4 was allotted to the plaintiff and there is an intervening plot no.3 which belongs to Sh. Devi Ram. Similarly, aks sizra reveals plots which were partitioned amongst Harijans. It is not disputed that Khasra no.88/14/3, 16/2, 17/1 belongs to Gram Panchayat which is in possession of Makbuja Harijan which fact is evident from the jamabandi for the year 1997-98 and this property was partitioned amongst harijans which is evident*

from the copy of the order of partition and demarcation tendered by the defendants in respect of his plea. Since, there is an intervening plot no.3 between the property of plaintiff and defendants, it cannot be stated that defendants have handed over the land to the plaintiff. This fact is concealed by the plaintiff in his plaint which appears that he has not come to the court with clean hands. Copy of the ration card, chulla bill, electricity bill do not create any title in favour of the plaintiff over the property in question. With this observation, I do not find any prima facie case and balance of convenience in favour of the plaintiff."

The Lower Appellate Court has also confirmed the order of the trial court dismissing the application for temporary injunction filed by the plaintiff. Before me the learned counsel for the petitioner has again placed reliance on a demarcation report dated 18.09.2002 which has however already been considered by the Lower Appellate Court.

I therefore find no error in the view taken by the courts below so as to warrant interference by way of this revision petition. The same is accordingly dismissed.

November 27, 2006 (P.S.Patwalia)
monika Judge